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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Plaintiff, BERNADETTE EFFENDIAN vs. Defendants, NEW ENGLAND COMPOUNDING PHARMACY, INC. d/b/a NEW ENGLAND COMPOUNDING CENTER, PREMIER ORTHOPAEDIC AND SPORTS MEDICINE ASSOCIATES OF SOUTHERN NEW JERSEY, LLC, also trading as PREMIER ORTHOPAEDIC ASSOCIATES, PREMIER ORTHOPPAEDIC ASSOCIATES SURGICAL CENTER, LLC, KIMBERLEY YVETTE SMITH, M.D. a/k/a KIMBERLEY YVETTE SMITH-MARTIN, M.D., JOHN DOE(S) CORPORATIONS 1-4 and JOHN DOE(S), M.D. 1-4	Case No.: 1:13-cv-02568-RMB-JS MDL No. 1:13-md-2419-FDS
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PLAINTIFF'S MOTION FOR LEAVE TO AMEND
SECOND AMENDED COMPLAINT

Plaintiff, Bernadette Effendian, submits this Motion pursuant to Fed.R.C.P. 15 (a)(2) to respectfully request leave to file the attached Third Amended Complaint. Attached hereto, made a part hereof and known as Exhibit A is the proposed Third Amended Complaint. The Third Amended Complaint is substantially similar to the Original Second Amended Complaint, but adds Dr. Thomas A. Dwyer as a direct Defendant.

On December 20, 2013, Plaintiff filed a Second Amended Complaint. Attached hereto, made a part hereof and known as Exhibit B is a copy of the Second Amended

Complaint. Since that filing, Plaintiff has acquired additional documentation and information regarding Dr. Dwyer's roles and responsibilities in these matters. Additionally, Plaintiffs in the Marko vs. Premier Orthopedics case, 1:13-md-2419-fds acquired an Affidavit of Merit from Dr. Lawrence Jay Winikur in a case involving identical issues and wrongdoing. Attached hereto, made a part hereof and known as Exhibit C is Dr. Winikur's Affidavit of Merit. According to the Affidavit, Dr. Winikur believes that there exists a reasonable probability that the care provided by Dr. Dwyer fell outside of the professional standards and practices. Plaintiff is in the process of obtaining her own affidavit of merit.

The Civil Rules declare that leave to amend" shall be freely given when justice so requires." Fed.R.Civ.P. 15 (a)(2). Under this mandate, a denial of leave to amend cannot be founded on judicial whim. *Mirpuri v. Act Mfg.*, 212 F. 3rd 624, 627-628 (1st Cir. 2000) (citing *Forman v. Davis*, 371 U.S. 178, 182 (1962)). Accordingly, leave should be granted "[u]nless there appears to be an adequate reason for the denial of leave to amend (e.g. undue delay, bad faith, dilatory motive, futility of amendment, prejudice) ..." *Glassman v. Computervision Corp.*, 90 F.3d 617, 622 (1st Cir. 1996).

Here, none of the aforementioned reasons for denial of leave exist. On the contrary, the attached Affidavit of Merit demonstrates that a meritorious claim exists. Additionally, the Statute of Limitations has been tolled to November 1, 2014. There has been very limited discovery conducted to date. Therefore, Dr. Dwyer would not suffer any prejudice from being added as a direct defendant. Finally, attorney Jay Blumberg for the Premier defendants did not oppose other Plaintiff attorney's motions to add Dr. Dwyer as a direct defendant in other pending cases.

For the reasons set forth above, Plaintiffs respectfully requests leave of the Honorable Court to file the attached Third Amended Complaint adding Thomas A. Dwyer, M.D. as a direct Defendant.

Respectfully submitted,
LAW OFFICES ROSEMARIE ARNOLD

/s/ Evan D. Baker
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Attorney for Plaintiff, Bernadette Effendian

Dated: October 30, 2014

LOCAL RULE 7.1(a)(2) CERTIFICATE OF GOOD FAITH

Prior to filing this Motion, the Plaintiff attempted in good faith to resolve or narrow this issue.

Dated: October 30, 2014

/s/ Evan D. Baker
EVAN D. BAKER